



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: King Nutronics Corporation

File: B-228596.2

Date: December 1, 1987

DIGEST

Prior dismissal of protest as untimely is affirmed where protest was filed more than 10 working days after the basis of protest was known.

DECISION

King Nutronics Corporation requests that we reconsider our dismissal of its protest as untimely in King Nutronics Corporation, B-228596, Nov. 5, 1987, 87-2 C.P.D. ¶ ____.

We affirm our prior dismissal.

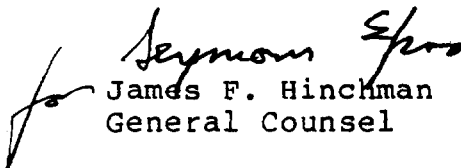
In its October 22, 1987, protest to our Office, King stated that prior to the April 23, 1987, closing date for receipt for proposals, the firm protested to the Air Force alleging that solicitation No. F41608-87-R-C196, which solicited a King Nutronics calibrator or an S-E Associates calibrator, was defective. The protester stated that the S-E calibrator was only equivalent to the King calibrator if accompanied by additional S-E calibrator equipment and the solicitation should be amended to reflect this. King advised that following the April 23, closing date, the Air Force, on May 5, orally advised the firm that the solicitation might be amended. The Air Force subsequently informed King on July 1 that it was evaluating for award a "revised" proposal from S-E which offered the additional S-E equipment.

Since King knew on July 1 that the Air Force was evaluating for award S-E's "revised" proposal, which according to King was improperly accepted based on the defective solicitation, but did not protest to the Air Force until October 1, after King learned of the award to S-E, we found King's Air Force protest untimely. 4 C.F.R. § 21.2(a)(2) (1987). We further explained that since King's October 1 agency-level protest was untimely, its subsequent October 22 protest to this Office was untimely and not for our consideration on the merits. 4 C.F.R. § 21.2(a)(3).

040715

On reconsideration, King argues that its protest is timely because on May 5 the Air Force advised that the solicitation might be amended. Thus, King believes it properly waited to protest until after it learned on September 30, that award had been made to S-E. King argues that it reasonably relied on the Air Force's May 5 representation that its protest alleging that the solicitation was defective would be resolved favorably and, therefore, the firm maintains that it properly protested only after the agency responded adversely to its protest by awarding the contract to S-E. However, King, by its own admission, clearly knew its protest basis on July 1, when King was advised by the Air Force that the agency had accepted a "revised" proposal from S-E offering additional S-E calibrator equipment without amending the solicitation. Therefore, King had 10 working days to protest from this date and its failure to do so renders its protest untimely.^{1/} See e.g. SACO Defense Systems Division, Maremont Corporation, B-212436, Aug. 10, 1983, 83-2 C.P.D. ¶ 200.

Our prior dismissal is affirmed.


James F. Hinchman
General Counsel

^{1/} In our original decision we noted that we were unable to determine from the protester's submissions whether it filed a timely preclosing date protest with the Air Force. However, as we explained in that decision, regardless of whether King filed a timely preclosing date protest, King, at the latest, knew its protest basis on July 1 and as discussed above, had 10 working days to protest from that date.